IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 139 OF 2001

Govind @ Gadlya Muka Waghe ..... Appellant.
(ori.accused)

versus

The State of Maharashtra ..... Respondents.

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Miss D.M.Shah advocate appointed for accused/appellant.
Mrs. V.R.Bhonsale APP for State.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 5TH APRIL, 2005.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 14-12-2000 passed by the Additional Sessions Judge, Kalyan in Sessions Case No.100/99, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story as emerges from our re-appreciation of evidence stated briefly is that the relationship between the accused Govind and his wife Kanta did not have cordial relationship. Both were addicted to liquor and used to have frequent quarrels. According to the prosecution on 4-12-1998 in the night when both were drunk such quarrel took place which culminated in the accused assaulting the victim with spade and stone which was available nearby. The assault was witnessed one of the daughters of the couple who raised cry against it and the accused left the place. The dead body was seen by P.w.1 Ganesh who informed the police, and police conducted investigation during which they recorded certain statements of the witnesses, as a result of which they arrested the accused as suspect and on completion of the evidence, the accused, present appellant was prosecuted for committing murder of his wife.

4. The prosecution has examined as many as 9 witnesses to prove its case and the learned trial Judge on appreciation of such evidence came to the conclusion of guilt and convicted the accused to suffer R.I. for life as mentioned above. It is this judgment and order of conviction which is impugned before us on the ground

mentioned in the memo of appeal as also canvassed before us by the learned advocate appearing on behalf of the accused/appellant at the instance of the State.

5. P.w.1 Ganesh si the person who heard the cry and found the dead body of the victim in the hut on 4-12-1998. He therefore informed the police and his complaint was recorded.

6. P.w.2 Sarika is the daughter of the victim and the accused who according to her deposition was present when the assault took place and she has deposed that the accused did hit the victim with spade and stone as a result of which the victim had bleeding injuries and when they have tried to intervene she was pushed away by the accused. The deposition of this witness who was hardly of 14 years old at that time is subjected to adequate cross examination. But there is nothing in it which would require disbelieving of this witness.

7. Then P.w.3 Saklubai is the person to whom there was immediate disclosure of the victim being killed by the accused and who deposed to that effect in the court. However, that witness is not an eye witness.

8. Then P.ws. 4 and 5 are panch witnesses,. who were

panch to the production of stained shirt and recovery of weapon. But both of them have turned hostile and consequently their testimony is of no use to the prosecution.

9. P.w.6 is Dr. Rajendra who conducted post mortem and has proved that the victim had homicidal death by injury caused to her, which are possible by stone or spade.

10. P.w.7 Kalpana is inconsequential witness who gave accused a shirt to wear but the deposition of this witness does not in any manner help the prosecution. P.w.8 is the person who proves seizure of spade and P.w.9 is the investigating officer, police inspector Bhagwan. He has deposed how the seizure took place, how the accused was arrested, how the statements were recorded and claimed that the accused is the person who committed the murder. It was on acceptance of this evidence that the learned trial Judge convicted the accused as aforesaid.

11. The learned counsel appearing on behalf of the accused/appellant submitted that the conviction rests solely on the testimony of P.w.2 which is corroborated to the extent by P.w.3. But there is no evidence on

record to show that the accused intended to kill the victim, nor is there any evidence to show that there was any motive for killing or causing fatal injury to the victim by the accused. According to the learned advocate for the appellant, the couple was never keeping good relations, both were addicted to liquor and also used to quarrel between each other. Therefore inspite of having seen the assault, no further action was taken by the witness Sarika as she thought that the quarrel is as usual, the father hit the mother with the spade and stone. Not realising the fatality nor realising the seriousness of the situation, the witness has left. The contention by the learned counsel on appreciation of the evidence is that the prosecution has miserably failed to make out any case of section 302 IPC.

12. The learned Prosecutor supported the conviction by saying that the evidence of P.w.2 is duly corroborated by the evidence of P.w.3 and consequently there is no reason to interfere.

13. In our opinion, the evidence as is led by the prosecution and is accepted by the learned trial Judge as such, is adequate to warrant the finding that the accused alone was responsible for the homicidal death

of the victim. The fact that there used to be quarrels, and the fact that on the date of incident they have consumed liquor is also proved beyond doubt. In such circumstances, accepting the frequency in quarrel and the manner of assault, it is improbable for us to infer any intention to commit murder or any knowledge of likelihood of such assault resulting in death being present in the accused. He, all of sudden, assaulted the victim who as a result of the assault, died. In our opinion, present is a case which is squarely governed by Part (ii) of section 304. We accordingly set aside the order of conviction under section 302 IPC instead convict the accused under section 304(ii) IPC and sentence him to suffer R.I. for a period of six years. This period, according to the advocates appearing before us, has already over and the accused is liable to be released immediately if not otherwise required. In the result, therefore, the appeal succeeds partly and is allowed as aforesaid. The accused be set at liberty if not otherwise required.

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